

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

SIG(Space) Meeting--25 August 1988 (U)

FROM:

Lt Gen Edward J. Heinz, USAF
Director, Intelligence Community Staff

EXTENSION

NO.

ICS 4275-88

DATE

31 August 1988

25X1

TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

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ICS 4275-88

31 August 1988

MEMORANDUM FOR THE RECORD

SUBJECT: SIG(Space) Meeting--25 August 1988 (U)

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Director
Intelligence Community Staff
Washington, D.C. 20505


31 August 1988

NOTE FOR: DCI

VIA: DDCI

SUBJECT: SIG(Space) Meeting--25 August 1988

Attached, FYI, is a Memorandum for the Record on the recent SIG(Space) meeting that I attended on your behalf. I have also attached a copy of the draft decision paper that focused the discussion at the meeting. If you can spare the time, I think it would be helpful if you skimmed through this decision paper. Although it now appears likely that this issue will end up going to the President, agency positions are not that far apart to rule out a compromise.


Edward J. Heinz
Lieutenant General, USAF

Attachment:
As Stated

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ANNEX A

Section 301. Section 301 of the Trade Act, as amended, should be examined to determine if it is useful in addressing this problem. The following description is meant to assist in making a preliminary decision of whether to consider it further. Any final decision should be made only after more facts and further analysis is completed.

The primary purpose of section 301 is to address acts, policies, and practices of foreign governments which are unjustified, unreasonable, or discriminatory and burden or restrict U.S. commerce.¹

A section 301 investigation can be initiated by the U.S. Trade Representative (USTR) on his own motion or can be initiated on the basis of a petition by the firm or industry adversely affected by the harmful action of the foreign government. If it is found that an action or practice is unjustified, unreasonable, or discriminatory and burdens or restricts U.S. commerce, then the USTR has discretion in determining what action to take in order to adequately address the action.

These actions include all appropriate and feasible action within the authority of the President that he directs the USTR to take as well as any of the following:

- o suspending, withdrawing, or preventing the application of benefits of trade agreement concessions;
- o imposing duties or other import restrictions on goods or fees or restrictions on the services of the foreign country; or,
- o binding agreements which eliminate or compensate for the problem.

In this case, it is likely that the current practices of the Chinese could fall under the category of "unreasonable."

It is within the USTR's authority to determine whether to initiate a section 301 investigation. He must consider whether such a case could effectively address the issue. Once a case

¹ This description of section 301 is based on the trade bill the President is expected to sign on August 23, 1988. (It will become the Omnibus Trade and Competitiveness Act of 1988.) If the President does not sign the bill, which is unlikely, the description and analysis will remain generally applicable.

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such a case could effectively address the issue. Once a case is initiated, the USTR is required to request consultations with the foreign country concerned regarding the issues involved in such investigation.

If the consultations are unsuccessful in solving the problem, the USTR must make within 12 months of the initiation of the investigation a determination on whether the act, policy, or practice is unreasonable and burdens or restricts U.S. commerce and what action, if any, is to be taken. That action must be taken by the 30th day after the determination unless there are statutory reasons to delay the action, such as the foreign country is making substantial progress in eliminating the problem and a delay is necessary in order to obtain a satisfactory solution. If action is taken, the foreign country's actions are monitored.

Further action may be taken if the foreign country is not satisfactorily implementing the solution. Any action taken under section 301 may be modified or terminated, subject to the direction of the President, where the original action is no longer appropriate. In any event, the action is to be terminated in 4 years unless the petitioner or industry benefiting from the action submits to the USTR a written request for the continuation of the action. That request will be reviewed as to the effectiveness of achieving the objectives of section 301 and the effect of an extension on the U.S. economy.

The above description is that of how section 301 works under the statute. Several practicable considerations must be taken into account as well. First, and foremost, is what effective action, if any, can be fashioned in order to achieve the policy goals. Compensation from the foreign country may be negotiated but would not eliminate the problem. Retaliatory action might be taken, but the foreign country may decide to withstand the action and continue its offensive act, policy, or practice. Section 301 would then become less effective than would be desired in that situation and its credibility could be damaged in the long run as an effective tool in dealing with unfair trade problems. It has become the practice not to self-initiate a section 301 investigation unless the case is felt to be a clear and convincing one, generally for the reasons discussed above.

The subsidy allegations must also be taken into account. Under U.S. domestic subsidy law, it has been determined that subsidy cases against a non-market economy country are not feasible due to the nature of that economy. While it is true that this policy of not applying the subsidies law to a non-market economy country does not necessarily apply to section 301, its rationale could easily apply in cases such as this one. However, a decision could be taken, if appropriate, not to apply such as rationale in order to determine if these acts are

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"unreasonable."

In the one major section 301 case up to now which involved subsidies (Arianespace), it was found that there were no unreasonable actions because the subsidies provided were similar to those offered by the United States. It would be necessary to distinguish between that case and the Chinese launch service problem, which may be possible depending on what the exact subsidies are and what subsidies the United States currently provides for commercial ELV service providers.

As to predatory pricing, it is not clear that just the presence of erratic and low prices would result in a finding of an unreasonable act which burdens U.S. commerce. One might also reasonably look at whether the launching entity was acting in a commercially viable manner, not just whether it was covering or recovering all costs on each launch.

In sum, section 301 may be useful in pushing the Chinese for consultations and a negotiated solution, but it must be weighed with overall policy considerations, including how the administration/USTR will apply Section 301 as amended by the new trade bill.

Consultations with the PRC, possibly under the auspices of the U.S.- PRC Joint Commission on Commerce and Trade, could be held before a Section 301 case is initiated. The USG has never taken a Section 301 action against PRC and consideration should be given to identifying and evaluating the type of leverage the U.S. has with the PRC.

Factual Analysis. Low prices alone are not "unreasonable" under Section 301. The question comes down to what it actually costs in the PRC, which is virtually impossible to determine. It may be possible, however, to determine sources of support.

Some of these supports include, marketing, financing, research and development, insurance and launch pad and range construction, management, safety and maintenance are all carried out by the Great Wall Industries Corporation, which is part of the Ministry of Astronautics Industry. If the cost of these activities is not reflected proportionately in the price, it might be concluded the price is "unreasonable."

One example of an indirect support is in launch insurance. The USG requires U.S. commercial ELV service providers to carry the maximum amount of property damage insurance commercially available at a reasonable price.

In contrast, the PRC requires customers to sign cross-waivers of liability whereby parties to the launch agreement bear the risk of property damage to their respective property and waive the right to make claims against the other party. This reduces Chinese costs in two ways. First, it eliminates the risk

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element for damage to the customer's property. Second, the PRC is the final arbiter of costs for any damage caused to its own property, hence, the Great Wall Industrial Corporation (which produces the Long March) does not bear any cost to manage that risk.

Furthermore, insurance industry sources indicate the Chinese do not have a risk management program to protect the population from an accident. For U.S. ELV launcher risk management is an expensive proposition, even when launches occur over water. Since all three PRC launch ranges are inland, yet only minor population safety precautions are taken, each launch poses a substantial risk to property and human life which is not reflected in the price.

As for launch insurance for the customer, the Great Wall Industries Corporation (GWIC) provides low cost insurance, which does not reflect the true risk. This is justified on the basis that GWIC has full confidence in the Long March series.

These indirect supports might be considered "unreasonable," in the context of Section 301. Efforts to further document these supports would strengthen that conclusion and increase U.S. leverage.

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Attachment B

Attendees at 25 August 1988 SIG(Space) Meeting

NSC Staff	William Cockell
NSC Staff	Col Roger DeKok
DoT	Mrs. Mimi Dawson
NASA	Dale Myers
Treasury	Michael Darby
OMB	Wayne Arny
ACDA	George Murphy
JCS	Maj Gen George Butler, USAF
CEA	Thomas Moore
DoC	Ms. Shellyn McCaffrey
USTR	Ambassador Michael Smith
OSTP	Thomas Rona
DCI	Lt Gen Edward J. Heinz, USAF
State	Ambassador E. Allan Wendt
DoD	William Taft

Scheduled but did not attend:

EPC	Nancy Risque
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